No. 300

In the Supreme Court of the United States

INDEPENDENT COAL AND COKE COMPANY and CARBON COUNTY LAND COMPANY,

Petitioners,

vs.

UNITED STATES OF AMERICA and CARBON COUNTY,

Respondents.

ON A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE EIGHTH CIRCUIT

BRIEF OF THE STATE OF UTAH, APPEARING AS AMICUS CURIÆ, SUPPORTING WRIT OF CERTIORARI

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STATEMENT.

The State of Utah has heretofore filed its motion for leave to appear in this court as amicus curiæ in support of the petition of the Independent Coal & Coke Company and Carbon County Land Company for a writ of certiorari, and this Court has by its order permitted the appearance of said State.

In support of its motion the State filed certain suggestions, stating the reasons why it believed that its rights were vitally affected by this litigation. The State was not a party to this suit, either in the United States District Court for the District of Utah or in the United States Circuit Court of Appeals for the Eighth Circuit, and the State has never been a party to any suit or action wherein the title to the land involved in this controversy was drawn in question.

It appears from the record "that during the years 1901 to 1904 there were certified to the State of Utah under certain grants made to the State by the Act of July 16, 1894 (Stats. 109-110)", lands which are specifically described in the complaint. (R. 1).

It further appears from the record that the State made and executed contracts of sale to Stanley B. Milner and other persons, whereby said Milner and his associates undertook to buy said land from the State as agricultural land. (R. 2). In January, 1907, the United States of America instituted a suit against Milner and his associates. The purpose of this suit was to annul and set aside the contracts which said Milner and his associates had made with the State of Utah on the ground that the lands were not agricultural in character but were mineral in character. This suit resulted in a decree in favor of the United States and against Milner and his associates, annuling said contracts, and the Carbon County Land Company was an assignee of Milner and his associates and was a party to the aforesaid suit. The decree of the United States District Court for the District of Utah was made on June 8, 1914, and that decree was affirmed by the Circuit Court of Appeals of the Eighth Circuit on November 15, 1915. (228 Fed. 451). (R. 2, 3, 4).

The State of Utah was not a party to that suit and did not appear or take any part in such suit. No suit or proceeding of any sort was ever brought by the United States of America against the State of Utah for the purpose of in any wise affecting the title to the land involved.

The State of Utah continued to hold the title to this land, and in the early part of the year 1920 conveyed that land to the Carbon County Land Company for the agreed purchase price of $556,42S. The land involved contained 5,564.28 acres. The Carbon County Land Company agreed to pay $100 an acre therefor, and on January 2, 1920, the Carbon County Land Company executed and delivered to the State of Utah that certain mortgage securing the indebtedness of $556,42S. (This mortgage is set forth in the printed Suggestions made by the State in support of its motion for leave to appear in this court; see Printed Suggestions, Pages 4 and 5.)

It thus appears that the transaction between the Carbon County Land Company and the State of Utah in 1920 was in no wise connected with the contracts made between Milner and his associates and the State in the years 1901 and 1904. The transaction of 1920 was entirely new and independent of the contracts annulled by the decree of the United States District Court made June 8, 1914. It appears from the record that the contracts annulled required the Milners to pay to the State of Utah $1.50 per acre for the land described in those contracts. (R. 12). It appears from the mortgage above referred to that the Carbon County Land Company has

agreed to pay the State $100 per acre for the land involved. From these record facts one must conclude that the two transactions were entirely separate and independent.

The State of Utah claimed title to the land from the time of the certifications in 1901 and 1904 continuously until January and February, 1920, when it conveyed that title to the Carbon County Land Company and received back from that Company the Purchase money mortgage for $556,428, and the State of Utah has since the execution of that mortgage claimed that it was a valid obligation, giving a lien to the State of Utah upon the land in question for the amount of the purchase price and interest accumulations.

On October 16, 1920, the Carbon County Land Company sold and conveyed to the Independent Coal and Coke Company 1200 acres of land for the consideration of 500,000 shares of the capital stock of that Company. Eighty acres of the land so conveyed were comprised within a school section, to-wit: Section 2. Eleven hundred twenty acres of the land so conveyed were a part of the land involved in this suit; and the Independent Coal & Coke Company, in addition to giving its 500,000 shares of capital stock to the Carbon County Land Company, assumed and agreed to pay to the State of Utah $112,000 of the mortgage indebtedness due and owing from the Carbon County Land Company to the State of Utah by reason of the aforesaid mortgage. (See Printed Suggestions of the State, Pages 8 and 9.)

CONTENTIONS OF STATE OF UTAH.

The State of Utah makes the following contentions:

1. That the certifications made by the United States in the years 1901 and 1904, through its Secretary of Interior, conveyed title from the United States to the State of Utah.

2. That the decree of the United States District Court of June 8, 1914, affirmed by the Circuit Court of Appeals of the Eighth Circuit November 15, 1915, did not in any manner affect or annul or even disturb the title of the State of Utah to the lands in question.

3. That the State of Utah had a valid title in January and February, 1920; that it had a right to convey and sell the lands in question to whomsoever it saw fit, and that the mortgage held by the State is in all respects valid.

4. That at the time of the commencement of this action, to-wit: May 16, 1924, (R. 1) the United States of America had no interest whatsoever in the land in question.

5. That this action is one to annul and annihilate the State's title and the State's mortgage, and that in any event it is barred by Section 8 of the Act of March 3, 1891 (Stats. 1099), which provides as follows:

> "Suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this Act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents."

Section 5114, 5 U. S. Compiled Statutes, (1916).

ARGUMENT

CONTENTION NO. 1.

THE CERTIFICATIONS CONVEYED TITLE FROM THE UNITED STATES TO THE STATE OF UTAH.

The United States, by bringing this suit, concedes the validity of this contention. It recognizes that the State of Utah had title to the land until it conveyed it to the Carbon County Land Company by the State Patent dated February 10, 1920. The prayer of the Bill of Complaint in this action states that "unless the State will surrender its claim" an action will be brought against the State of Utah in this court to annul the mortgage held and claimed by the State. (R. 5). That Bill of Complaint says in its prayer:

> "Wherefore, and now that the State of Utah has conveyed the legal title to said lands to the said defendant, Carbon County Land Company, the plaintiff prays that the defendant be adjudged and decreed to hold whatever title they have to the said lands in trust for the plaintiff, and to convey the same to the plaintiff, and deliver to the plaintiff any patent or deeds of the said lands in their possession, subject only to the mortgage taken by the State to secure the payment of the purchase price", etc.

This quotation from the prayer of the Complaint is consistent with the theory upon which the Complaint rests. That theory is that the State held title; that it had power to convey the title; that it did convey the title, and that the conveyance operated upon the title to the extent of transferring it from the State to the defendants in this action, subject to the State's mortgage. This Complaint shows that the mortgage itself has a legal existance; that it is not absolutely void. It is true the United States claims that it has a right to set that mortgage aside, but no claim is made by the United States that the mortgage is non-existent. The most that could be said for the Complaint of the United States is that the plaintiff claims that the mortgage is voidable; that the title held by the grantees of the State is voidable and not void.

The State of Utah contends that these concessions are an inherent and vital part of the action before this Court. They can neither be avoided nor withdrawn without destroying the very existence of this action. One may not sue to impress land with a constructive trust and have the holder of such constructive trust ordered to convey that land unless that alleged constructive trustee has something to convey. If he has no vestige of title, then, of course, there can be no trust. It seems to the State that it had a title which it could convey. The State believes it had a right to convey this land and that its conveyance of it was not in any sense an abuse of its legal power.

Even if the conveyance by the State is absolutely void, then the judgment of the United States District Court in dismissing the action was sound, regardless of the reasons given. If, on the other hand, the conveyance made by the State was merely voidable, then the judgment of the United States District Court was sound for the reason given, viz: That the Statute of Limitations had barred the right of the United States to proceed.

The sole question before this Court is whether the judgment entered by the United States District Court is sound *for any reason*.

The authority upon which the United States relies for the maintenance of this action conclusively establishes the contention of the State that it held title from the time of the certification continuously until it conveyed to the defendants herein.

Williams vs. United States, 138 U. S. 514; 34 L. Ed. 1026.

On Page 9 of the Brief of the United States, filed in the United States Circuit Court of Appeals in this action, there appears the following language:

> "We rely strongly upon the case of Williams vs. United States."

In that decision Mr. Justice Brewer, speaking for a unanimous court, said:

> "It cannot be doubted that the certification operated to transfer the legal title to the State."

This sentence and the legal result of such certification, which it enunciates, were necessary parts of the judgment of this Court. It was upon such theory that the State predicated its right to sell this land.

CONTENTION NO. 2

THE DECREE OF THE UNITED STATES DISTRICT COURT OF 1914 WAS NOT BINDING UPON THE STATE BECAUSE THE STATE WAS NOT A PARTY TO THE ACTION IN WHICH THE DECREE WAS MADE.

The State believes it is fundamental that no one can be bound by a decree of any court unless he is a party to the suit in which the decree was made. Of course, if he stands in the shoes of any party so that he can be said to be in privity with such party, then, of course, he is in legal effect a party. But the State had the legal title to the land in question. It was not a party to the action brought in the United States District Court in 1907 and decided in 1914. It did not intervene in that suit. It could not have been brought into that action in that court because such an action against the State could have been maintained only in this Court.

The title which the State had, it retained. It never reconveyed it to the United States. It was a title capable of alienation, and when the United States never sought in any wise to disturb that title, the State believed such title had become absolute by lapse of time, i. e. by operation of the Statute of Limitations. The State concluded, and had a right to conclude, that it, by the conduct of the United States, had be-

come vested with a right of property in this land that was above, beyond and immune from attack by the United States. It must be remembered that sixteen years had intervened between the last certification of this land by the United States and the conveyance of the title to the land by the State, and that twenty years had intervened between the time of such certification and the commencement of this action.

By virtue of the provisions of the Enabling Act, dated July 16, 1894, and by virtue of the provisions of the State Constitution, to-wit: Article 20 of that document, the State, if it had title, held the land in trust for the people, to be used and disposed of for the purposes mentioned in said Enabling Act in such maner as the legislature of the State might provide. (See Section 12 of the Enabling Act and Article 20 of the State Constitution).

If the State had a good title to this land in 1920, then it was the legal and moral duty of the officers of such State to defend and preserve that title. The State believed that whatever right, if any, had existed in the United States as against such title, by reason of mistake or error, had been extinguished by reason of the Statute of Limitations, to-wit: Section 8 of the Act of March 3, 1891.

This State has done no wrong. If this land was obtained through patent or certification from the United States by means of mistake or fraud, then undoubtedly the United States had a right to commence an action to vacate or annul that patent or certification, if such action was instituted within the time allowed by law; and under the Williams case, supra, if anyone entered into a contract with the State for the acquisition of the lands involved, and the contract was voidable because of mistake or fraud, then the United States had the legal right to bring an action to annul such contract against the party who had obtained it, but that action and the decree entered therein did not in any wise disturb the title held by the State. That title so held could have been reconveyed to the United States only by the legislature of the State making either a direct legislative grant to the United States or authorizing some State officer to make such a grant. No officer of the State could make such reconveyance without being empowered by some valid legislative act.

In the absence of such legislative act, then, it is perhaps true, as is intimated in the Williams case, supra, that the United States might have compelled such reconveyance by appropriate action brought and prosecuted in this Court, but

such an action, it is submitted, must have been instituted by the United States against the State within the time allowed by law, to-wit: six years after the issuance of the certificate or the discovery of the fraud or mistake. When the legislature of the State did not convey or authorize conveyance, and when the United States did not invoke the jurisdiction of any court to obtain the conveyance of the title to the land from the State, then the Statute of Limitations extinguished all right of the United States, and the right of the State became absolute and valid because no one had any judicial right to question the title of the State. After the expiration of the six-year period the power of the courts had ceased to exist. The question was no longer a matter of judicial cognizance, and the adjustment of the rights, if adjustment was to be made, was a matter of a political nature solely and entirely within the discretion of the legislature of the State.

Under such circumstances, assuming that the State had title and that the United States had a better right which could be enforced by the courts in appropriate actions instituted within the statutory period, it seems to follow that the State could, of course, not be bound by decree made and entered in a suit to which such State was not in any sense a party. If this reasoning is not sound, then it would seem that this whole action was a useless proceeding to obtain something that was non-existent, and that the suggestions made in the opinion of this Court in the Williams case are likewise unsound. The whole matter may be reduced to a simple question: Why was it necessary for either the legislature of the State of Utah to reconvey this title or authorize its reconveyance, or, in the absence of such legislative authority, why was a court action necessary to compel the State to make such reconveyance? If the decree entered in the United States District Court of the District of Utah took from the State everything the certificate passed, it would seem that no such action, either through the courts or through the legislature, would have been of any use whatsoever. Surely the State cannot be deprived of its title, if it has one, through judicial action, except in some case where the State is a party. No such case was ever instituted, and consequently the title of the State, it is submitted, is absolute.

In arguing these matters the various contentions of the State overlap and the discussion already made applies to Contentions Nos. 3 and 4.

(It ought always to be remembered that the Enabling Act granted certain specified Sections, to-wit: 2, 16, 32 and 36, to the State for school purposes, and then it made other grants, some of a floating character, under which grants the State had the right to make selections. Whenever the State selected a given number of acres of land it was charged with the acreage so selected, and it could not by means of selections exceed the total acreage granted. The State selected the land here involved and it has been charged with the amount of acreage so selected. That charge against it has stood for twenty-six years, and to now treat the selection as if it were null and void would seem to be improper and unjust).

CONTENTION NO. 5.

STATUTE OF LIMITATIONS.

The State in a great measure contents itself by referring to the Briefs already filed by the other parties to this suit.

The Act of March 3, 1891, Section 8, in substance says that all suits to vacate and annul patents shall only be brought within six years after the date of the issuance of such patents. The history of the legislation of which this Section 8 is a part seems to make clear that Congress intended no distinction between the word "patent" and the word "certification". In 1887 the Congress of the United States authorized the Attorney General to commence proceedings to cancel all patents, certifications and other evidences of title found to have been erroneously issued in the adjustment of railroad land grants, and then in 1891 Congress enacted a statute undertaking to give security of title to lands theretofore or thereafter obtained from the Government, and then in 1896 Congress again complemented its previous legislation with further enactments relative to this subject.

It seems to the State of Utah that if anyone will read this legislation and apply each part of it, having in mind the purpose which Congress undoubtedly intended, he must come to the conclusion that such purpose was, first to provide some orderly proceeding, in which could be determined the rights of the Government and the rights of the grantees, and, second, to fix a time when all these controversies with reference to title to Government lands could be said to have ceased and determined. Surely Congress could not have intended that the title to lands acquired by means of a formal patent should at some time or other become sure and certain, and that the title to lands acquired by means of an informal patent, to-wit:

a certificate, should remain insecure and uncertain forever and a day. To impute such an intention to the legislative department of the Government is a reflection upon human intelligence.

In the case of United States vs. Winona Railroad, 165 U. S. 463, decided February 15, 1897, this Court held that this legislation to which reference has been made applied to certifications as well as to patents, and applied the amendment of 1896 to a certification. If that amendment of 1896 can apply to a certification, then it is submitted that the entire law must be construed as applying to such informal instruments, and it is submitted that Section 8 must be read so that it will accomplish the purpose which the Federal Congress had in mind.

Mr. Justice Brewer, in his opinion in the Winona case, refers to the "benign influence" of the Statute of 1891. That benign influence cannot operate to its full and complete extent unless the legislation of which the Act of 1891 is merely a part is held to apply to all instruments by which the Federal Government conveys its title. It is true that where the Federal Government is merely a trustee for other parties, such as Indians and other wards, there is no occasion for applying such legislation, but where the Government is acting in the capacity of an owner of the land, then there can be no reason for saying that a lapse of time shall prevent the disturbance of a title when it is conveyed by formal patent, and that the same lapse of time shall have no curative effect when the land is conveyed by means of a certification. Not only have the Courts construed the legislation as we contend, but the Land Department itself has applied a like construction.

Cole vs. State of Washington, 37 L. D. 387.

It was upon such decisions, as well as upon fundamental principles, that the State relied and still relies for the validity of its title and the validity of this mortgage.

It therefore prays that the decision of the United States District Court for the District of Utah be affirmed.

Respectfully submitted,

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